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FM AMEMBASSY COLOMBO

TO RUEHC/SECSTATE WASHDC IMMEDIATE 1287

INFO RUCNMEM/EU MEMBER STATES COLLECTIVE PRIORITY

RUEHKA/AMEMBASSY DHAKA PRIORITY 2407

RUEHIL/AMEMBASSY ISLAMABAD PRIORITY 9429

RUEHKT/AMEMBASSY KATHMANDU PRIORITY 7684

RUEHLO/AMEMBASSY LONDON PRIORITY 5439

RUEHNE/AMEMBASSY NEW DELHI PRIORITY 3845

RUEHNW/AMEMBASSY OSLO PRIORITY 0025

RUEHOT/AMEMBASSY OTTAWA PRIORITY 0225

RUEHMD/AMEMBASSY MADRID PRIORITY 0176

RUEHKO/AMEMBASSY TOKYO PRIORITY 4488

RUEHCG/AMCONSUL CHENNAI PRIORITY 9989

RUEHBFI/AMCONSUL MUMBAI PRIORITY 7224

RUEHON/AMCONSUL TORONTO PRIORITY 0220

RHEFDIA/DIA WASHINGTON DC PRIORITY

RUEHGV/USMISSION GENEVA PRIORITY 0131

RHHMUNA/HQ USPACOM HONOLULU HI PRIORITY

RUEHBS/USEU BRUSSELS PRIORITY

RHEHAAA/NATIONAL SECURITY COUNCIL WASHINGTON DC PRIORITY

RUEKJCS/SECDEF WASHDC PRIORITY

C O N F I D E N T I A L SECTION 01 OF 03 COLOMBO 000105

SIPDIS

DEPARTMENT FOR SCA/INSB

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TAGS: [PGOV](#) [PREL](#) [PREF](#) [PHUM](#) [PTER](#) [FAID](#) [MOPS](#) [CE](#)

SUBJECT: SRI LANKA: FONSEKA DETAINED, GOVERNMENT PLANS
COURT MARTIAL

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Classified By: CHARGE D'AFFAIRES VALERIE C. FOWLER. REASONS: 1.4 (B, D)

¶1. (C) SUMMARY: On February 8, former opposition presidential candidate Fonseka was taken into custody by military police. Several key joint opposition leaders were at the office when the detention occurred and said the military personnel had man-handled Fonseka and dragged him across the floor as they took him out to waiting vehicles. The Defense Ministry website said the military police had arrested Fonseka because he had violated military regulations, although official statements on February 9 still lacked clarity. Mrs. Fonseka said that after repeated calls, including to the ICRC, for assistance, government officials said she would be allowed to visit her husband, who was being held at Navy headquarters, and bring him his medications. At a February 9 meeting with diplomatic heads of missions, opposition coalition leaders described the detention of Fonseka as an "abduction" and warned that the country was moving toward "fascism." They claimed the crisis had "galvanized our solidarity" going into parliamentary elections, which may be called later today, and said a demonstration would take place in front of the Supreme Court on February 10 as a symbolic gesture against the "law of the jungle" that was spreading throughout the country under the Rajapaksas. Under the "threat to national security" clause of military regulations, Fonseka could be held in custody throughout the entire court martial proceedings. Fonseka would have no access to independent media, and his statements would be released through the Army Spokesman. Members of the court martial tribunal would include tri-service commanders and senior military officers.
END SUMMARY.

FONSEKA'S DETENTION

¶2. (C) On February 8, retired General Sarath Fonseka was

taken into custody by military police around 9:30 PM local time at his office. This came less than two weeks after his defeat in Sri Lanka's first post-war presidential election, and while the victor in that election, President Rajapaksa, was still on an official visit to Russia. Several key joint opposition leaders were at the office when the detention occurred, including Mano Ganesan of the DPF, Rauff Hakeem of the SLMC, and Somawansa Amarasinghe of the JVP party.

Fifteen to twenty military officials reportedly entered the office, while another 100 waited outside. Mangala Samaraweera of the SLFP(M) immediately phoned PolCouns with the news, and Ravi Karunayake of the UNP called Charge, both saying the military personnel had roughed up Fonseka and dragged him across the floor as they took him out to waiting vehicles. Fonseka's media secretary also was detained at the office and reportedly beaten, although it was unclear if he was taken into separate custody by civilian authorities or by the same military personnel.

¶3. (C) The Defense Ministry website said the military police had arrested Fonseka because he had violated military regulations, although official statements on February 9 still lacked clarity. Post contacts in the military said that according to Army Act 57, all military personnel were automatically considered to be in the reserves for three years following retirement and, therefore, were still subject to military law. While this military code would prohibit political activity by any former military personnel throughout this three-year period, the rules were said to be particularly strict for the first six months after retirement. (NOTE: Fonseka retired from his position as Chief of Defense on November 12, 2009. END NOTE) Lakshman Hulugalla, Director General of the Defense Ministry's Media

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Centre for National Security was quoted on the Defense Ministry's website as saying Fonseka had been arrested "in connection with condemnation acts and other military offences committed by him." One contact told Post that all previous cases of conspiracy charges pursued by the government were carried out in the civil justice system, even when the accused were military personnel.

¶4. (C) By mid-afternoon on February 9, Fonseka's wife released a statement to the press repeating the accusation that Fonseka was beaten by the military police as they arrested him and that she had not been told where he was being held despite several requests. There were also reports that he was being denied medicine he required several times daily ever since an LTTE suicide attack left him severely injured. Later in the day, Mrs. Fonseka said that after many calls, including to the ICRC, for assistance, government officials contacted her and said she would be allowed to visit her husband, who was being held at Navy headquarters, and to bring him his medication.

OPPOSITION: "MOVING TOWARD FASCISM"

¶5. (C) At a February 9 meeting with diplomatic heads of mission, opposition coalition leaders (minus UNP leader Ranil Wickremesinghe, who was in India), along with Mrs. Fonseka, discussed the general's detention, its implications for democracy in Sri Lanka, and what they saw as the way forward.

UNP deputy head Karu Jayasuriya refused to characterize the detention as a taking into custody, insisting it was an "abduction," because Fonseka was a civilian and not subject to military justice. He cited opposition claims of massive fraud in the election and saw the detention of Fonseka as a continuation of harassment of the opposition in an effort to cover up that fraud. Mangala Samaraweera said the full force of the government was now put towards the general election, which the president may call later this evening, explaining the government hoped media attention would turn to the election, pushing Fonseka's arrest from the front pages. The opposition leaders said, however, that this crisis was

"galvanizing our solidarity." Several described the Rajapaksa regime's latest moves against them, the crackdown on the press, and the purges in the military as moves toward "fascism" and "dictatorship." In response, the opposition would continue with its legal challenges against the election results, but they also now planned "direct action" in the streets. They said a demonstration was planned for February 10 before the Supreme Court building as a symbolic gesture against the "law of the jungle" that was spreading under the Rajapaksas. For now, such demonstrations would be peaceful but "could escalate."

COURT MARTIAL PROCEDURES

16. (C) Based on Post discussions with persons in and close to the military, a formal summary of evidence must be presented to a military legal officer prior to an arrest, unless there is a threat to national security. In the latter case, the summary of evidence must take place within 48 hours of a person's detention, although some contacts told Post the summary can take as long as two months, effectively preventing Fonseka from contesting the general elections. Fonseka will be allowed a civilian legal counsel or can opt for military legal counsel once the Army Commander has reviewed the summary and given the convening order for the court martial. The accused is also authorized a "friend of the accused," a military person to act on his behalf. The opposition leadership confirmed this afternoon that a lawyer

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representing Fonseka would file an application with the Supreme Court on February 9 or 10, alleging a fundamental violation of Fonseka's human rights.

17. (C) Under the "threat to national security" clause, Fonseka could be held in custody throughout the entire court martial proceedings. Fonseka would have no access to independent media, and his statements would be released through the Army Spokesman. Members of the court martial tribunal would include tri-service commanders and senior military officers. A long-time Post contact with close ties to the military thought it likely that Air Force Commander Air Chief Marshal Goonaltilake and former Naval Commander Karunagoda would be on the panel, along with a third recalled commander. Judge Advocate General Major General Mohanthi Peiris will likely preside over the case. Major General Peiris had been serving as the Director General Legal of the Army until last week, when she was promoted to this new position. The woman she replaced was actually demoted from the Judge Advocate General position Peiris now holds, to take Peiris's prior position, and may be tapped to oversee the summary of evidence against Fonseka. One military contact reported that the Secretary of Defense had made these personnel changes himself last week, and another contact told Post the change was made in part because Peiris might have been unlikely to allow the case to move forward to a court martial.

COMMENT

18. (C) In terms of the court martial itself, the cards are not in the general's favor. It will be difficult for him to find a serving member of the military willing to act as his "friend of the accused" during the proceedings or to make any public statements on his behalf, given the current climate of fear among any remaining Fonseka supporters in the military. Many in the current Army, Air Force, and Navy leadership have a disdain for Fonseka. During his tenure as the Army Commander, Fonseka took claim for winning the war against the LTTE, giving no credit to the Air Force and the Navy, and many senior Army officers felt sidelined by Fonseka and harbor a deep resentment for him. One contact told Post that two Brigadier Generals who were known to be avowed enemies of Fonseka, Sumith Manawaduge and Jagath Wimalasiri, were sent

with the military police to arrest him. SLMC leader Hakeem described the arresting commanders as in "an indecent hurry," and JVP leader Amarasinghe said the leading general acted "as if he had a personal vendetta against the general."

FOWLER